

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

**JORGE E. HINOSTROZA**

Claimant

VS.

**IBP, INC.**

Self-Insured Respondent

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Docket No. 247,867

**ORDER**

Claimant requested review of the May 22, 2003 Award by Administrative Law Judge (ALJ) Brad E. Avery. The Appeals Board (Board) heard oral argument on April 6, 2004.

**APPEARANCES**

Stanley R. Ausemus of Emporia, Kansas, appeared for the claimant. Gregory D. Worth of Roeland Park, Kansas appeared for the self-insured respondent.

**RECORD AND STIPULATIONS**

The Board has considered the record and adopted the stipulations listed in the Award.

**ISSUES**

The sole issue raised by the parties is the nature and extent of claimant's disability resulting from his work-related injury. The ALJ found the claimant sustained his burden of proof and therefore awarded the claimant an 18 percent whole body functional impairment based upon the combined opinions offered by the court ordered independent medical examiners, Drs. Lynn Ketchum and Sergio Delgado. By implication, it is clear the ALJ found claimant had sustained his burden of proof not only on the bilateral upper extremity complaints but as to the neck as well.

Claimant maintains the ALJ erred in not adopting the 32 percent whole body impairment assigned by Dr. Pedro A. Murati. Conversely, respondent asserts the claimant

is entitled to no permanent impairment for his neck complaints and should be limited to a 14 percent whole body impairment for his upper extremity impairment.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Having reviewed the evidentiary record filed herein, the stipulations of the parties, and having considered the parties' briefs and oral arguments, the Board makes the following findings of fact and conclusions of law:

As noted by the ALJ, four doctors have commented on claimant's permanent impairment. Drs. Pedro A. Murati and Jeffrey T. MacMillan each evaluated claimant at the request of their respective clients. Dr. Murati assigned a combined 32 percent to the body as a whole for claimant's work-related injury. This rating includes not only impairment for the upper extremities and shoulders, which claimant had voiced no complaints about and received no treatment for, but another 5 percent to the body as a whole for his alleged cervical limitations. According to Dr. Murati, claimant suffers from myofascial pain and limited range of motion in his cervical area as a result of his work activities.

In contrast, Dr. MacMillan assigned a 11 percent to the body as a whole and specifically excluded any permanency for the neck. He testified that claimant's pain complaints were out of proportion to the physical findings observed in his examination. Specifically, claimant's MRI results were essentially normal and evidenced no herniation or foraminal stenosis in the cervical region. Thus, he concluded he warranted no permanent impairment for the neck.

Dr. Ketchum, the court-appointed independent medical examiner, assigned 15 percent to the body as a whole exclusively for the bilateral upper extremity complaints. Thereafter, the ALJ appointed Dr. Delgado who evaluated claimant's neck complaints and assigned 5 percent to the body as whole (DRE II) for the cervical impairment.

After weighing the testimony and the medical evidence, the ALJ was persuaded by the opinions of the court-appointed independent medical examiners. Other than Dr. Murati's analysis, the balance of the impairment ratings for the upper extremities varied only a few percentage points. As for the cervical complaints, both Dr. Murati and Dr. Delgado were similarly close in their impairment assessments and the Board is persuaded that claimant sustained a permanent injury to his neck while in respondent's employ. It is worth noting, as did the ALJ, that Dr. Murati's opinions are suspect in that he included impairment ratings for conditions the claimant was not complaining about and had no apparent causal relationship to the work-related accident. Moreover, Dr. Murati failed to utilize the preferred DRE methodology in assigning permanency for claimant's neck.<sup>1</sup>

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<sup>1</sup> Murati Depo. at 23.

Thus, the adoption of the independent medical examiners' opinions is reasonable. The ALJ's Award is affirmed in all respects.

**AWARD**

**WHEREFORE**, it is the finding, decision and order of the Board that the Award of Administrative Law Judge Brad E. Avery dated May 22, 2003, is affirmed.

**IT IS SO ORDERED.**

Dated this \_\_\_\_\_ day of April, 2004.

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BOARD MEMBER

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BOARD MEMBER

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BOARD MEMBER

c: Stanley R. Ausemus, Attorney for Claimant  
Gregory D. Worth, Attorney for Respondent  
Brad E. Avery, Administrative Law Judge  
Paula S. Greathouse, Workers Compensation Director